

## UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.		FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/720,826		11/24/2003	Robert A. Holton	FSUM 10467.21	5352	
321	7590	06/17/2004		EXAMINER		
SENNIGE	R POWI	ERS LEAVITT AN	TRINH, BA K			
ONE METR		`AN SQUARE	ART UNIT	PAPER NUMBER		
ST LOUIS,		102	_	1625		
				DATE MAIL ED: 06/17/200	DATE MAILED: 06/17/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>03</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).			Application No.	Applicant(s)				
Balk. Trinh  Balk. Bal			10/720,826	HOLTON, ROBERT A.				
The MALING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 02 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the provisions of 3 CPR 1.136(a). In no event, however, may a reply be simely filed  Extensions of time may be available under the provisions of 3 CPR 1.136(a). In no event, however, may a reply be simely filed  Extensions of time may be available under the provisions of 3 CPR 1.136(a). In no event, however, may a reply be simely filed  If the period for reply specified sizes is less than they (30) days, as new, within the statutory microun of hinty, 101 days will be considered limitely.  If the period for reply specified sizes is the thirty (30) days, as new indication of hinty in the period for reply with the set or extended period for reply with, by statutory period will appear and will express (MONTH) from the milling date of this communication, even if errory filed, may reduce any seared pasted turns adjustment. See 37 CPR 1.734(b).  Status  1) ■ Responsive to communication(s) filed on 12/24/2003.  2a) □ This action is FINAL.  2b) □ This action is non-final.  3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) □ Claim(s) 1.21 is/are pending in the application.  4) Of the above claim(s) is/are virthdrawn from consideration.  5) □ Claim(s) 1.21 is/are allowed.  6) □ Claim(s) 1.21 is/are rejected.  7) □ Claim(s) 1.21 is/are rejected.  7) □ Claim(s) 1.21 is/are rejected to.  8) □ Claim(s) 1.22 is/are rejected to.  8) □ Claim(s) 1.22 is/are rejected to.  10 □ The drawing(s) filed on 1.18/are: a) □ accepted or b) □ objected to by the Examiner.  Application Papers  9) □ The specification is objected to by the Examiner. Note the altached Office Action or form PTO-152		Office Action Summary	Examiner	Art Unit				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE @3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extraction of time may be a replaced under the provisions of 37 CFR 1.130(a). In no event, however, may a reply be smally filled.  - If the period for reply specified above, the maintenine statutory priced will apply and will expire Style (b) MONTHS from the mailing clind of the communication of the communicatio								
THE MAILING DATE OF THIS COMMUNICATION.  Eadracious or time may be wildled under the provisions of 3°CFR 1.13(6). In no event, however, may a traphy be timely filed after \$1X,0) in Communication.  I standard or time may be wildled under the provision of 3°CFR 1.13(6). In no event, however, may a traphy be timely filed after \$1X,0) in Communication.  I standard or the standard or the maintained side of this communication.  I standard or regive ispected by the maintained side of this communication.  Fallure to reply vision the set of excluded period for reply will, by atalute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply revealed by the file to either than there maintain after the maining date of this communication, even if timely filed, may reduce any secure and platent term separatem. See \$7 CFR 1.70(6).  Status  1)  Responsive to communication(s) filed on 12/24/2003.  2a)  This action is FINAL. 2b) This action is non-final.  3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s) 1.21 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5)  Claim(s) is/are allowed.  6)  Claim(s) is/are objected to.  8)  Claim(s) is/are objected to.  8)  Claim(s) is/are allowed.  6)  Claim(s)	The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply							
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Application/Control Number: 10/720,826

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## **DETAILED ACTION**

Claims 1-21 are pending.

It appears in the record that the IDS filed on 02/23/2004 has a missing page 4 ( or sheet 4 of 4). Correction is required.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-79 of U.S. Patent No. 6,673,833 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because they embrace overlapped subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ba K. Trinh whose telephone number is (571) 272-0695. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph McKane, can be reached on (571)272-0699. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ba K. Trinh

Primary Examiner Art Unit 1625

TRINH/BKT

12 June 2004